

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

AMY M. DATTILO)	
as Administratrix of the Estate of Charles)	
Michael Rauber, deceased)	2:09-cv-665
)	
Plaintiff,)	
)	
v.)	
BRUCE R. GUERDAN)	
MD, JOHN P. GALLAGHER)	
MD, DENISE WELCH)	
Social Worker, ROBERTA A. ANTON)	
RN, SHARON REGIONAL HEALTH)	
SYSTEM, EMERGENCY CARE)	
CONSULTANTS, PC, SHENANGO)	
VALLEY OB/GYN ASSOCIATES, LTD)	
and PRIMARY HEALTH NETWORK)	
)	
Defendants.)	

MEMORANDUM ORDER

Pending before the Court is the UNITED STATES' MOTION TO DISMISS (Document No. 5), which was filed on June 2, 2009. On June 3, 2009, the Court entered a Text Order which directed the Plaintiff to file a response to the Motion to Dismiss on or before June 22, 2009. This Text Order was sent to the Plaintiff's counsel via CM/ECF. However, the deadline passed several weeks ago and, as of the date of this Memorandum Order, Plaintiff has not filed a response to the Motion to Dismiss.

This medical malpractice case was originally filed in the Court of Common Pleas of Mercer County and was removed by Defendants to this Court. In May 2009, United States filed a motion to substitute as a Defendant, replacing John P. Gallagher, M.D. and Primary Health Network, as they are deemed to be federal employees for the purpose of the Federal Tort Claims

Act (“FTCA”). Upon inquiry from chambers staff, Plaintiff’s counsel explained that he does not intend to oppose the Motion to Dismiss, but instead, intends to re-file a complaint in the Mercer County Court of Common Pleas which does not name the Defendants that triggered this Court’s jurisdiction.

The government argues that the instant complaint against the United States should be dismissed for failure to exhaust administrative remedies, pursuant to 28 U.S.C. § 2675(a). The exhaustion of administrative remedies is a mandatory prerequisite to a claim under the FTCA. The Court agrees with the government’s recitation of the applicable law. As noted above, Plaintiff does not contest the government’s position. Accordingly, the UNITED STATES’ MOTION TO DISMISS (Document No. 5) is **GRANTED** and the Complaint is hereby **DISMISSED**. The clerk shall docket this case closed.

SO ORDERED this 23rd day of July, 2009.

BY THE COURT:

s/ Terrence F. McVerry
United States District Court Judge

cc:

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